

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

_____	X	
GABRIEL VAZQUEZ aka VASQUEZ,	:	
	:	<b><u>OPINION AND ORDER</u></b>
Plaintiff,	:	
	:	12 Civ. 7630 (ER)
v.	:	
	:	
CAPTAIN DAVIS, C/O STEVEN RENTES, C/O	:	
JOSEPH WONG, C/O GEORGE SANTIAGO,	:	
C/O ORVILLE JAMES,	:	
	:	
Defendants.	:	
_____	X	

RAMOS, D.J.:

Plaintiff Gabriel Vazquez, an incarcerated *pro se* litigant, filed this action pursuant to 42 U.S.C. § 1983 alleging that while he was imprisoned at George R. Verno Correctional Center, Captain Davis and Correctional Officers Steven Rentes, Joseph Wong, George Santiago, and Orville James threatened, assaulted, and beat him. On January 3, 2013, the case was referred to the Honorable James C. Francis IV, United States Magistrate Judge, for general pretrial purposes. Doc. 12. On January 19, 2013, Defendants answered the Complaint. Doc. 13.

On January 2, 2014, Defendants submitted a letter to Judge Francis requesting dismissal of the action with prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for Plaintiff's failure to prosecute the case. Doc. 38. On January 10, 2014, Plaintiff filed a motion for an extension of time to file an amended complaint. Doc. 40. On September 2, 2014, Judge Francis denied Plaintiff's motion on the basis of his failure to respond to Defendants' discovery demands "for a protracted period," and noted that the request to amend the Complaint does not address that failure. *See* Doc. 42.

On April 9, 2014, Judge Francis issued the Report and Recommendation, recommending that the Court grant Defendants' application and dismiss the Complaint. Doc. 41. The Report and Recommendation included notice to Plaintiff that he could file an objection within fourteen (14) days of that date. No objection has been filed.

### **I. Standard of Review**

A district court reviewing a magistrate judge's report and recommendation "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Parties may raise "specific," "written" objections to the report and recommendation "[w]ithin fourteen days after being served with a copy." *Id.*; *see also* Fed. R. Civ. P. 72(b)(2). A district court reviews *de novo* those portions of the report and recommendation to which timely and specific objections are made. 28 U.S.C. § 636(b)(1)(C); *see also United States v. Male Juvenile (95-CR-1074)*, 121 F.3d 34, 38 (2d Cir. 1997). The district court may adopt those parts of the report and recommendation to which no party has timely objected, provided no clear error is apparent from the face of the record. *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008). The district court will also review the report and recommendation for clear error where a party's objections are "merely perfunctory responses" argued in an attempt to "engage the district court in a rehashing of the same arguments set forth in the original petition." *Ortiz v. Barkley*, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008) (citations and internal quotation marks omitted).

### **II. Conclusion**

Despite Plaintiff's failure to object to the Report, the Court has reviewed Judge Francis's thorough and well-reasoned Report and finds no error, clear or otherwise. The Court therefore

adopts Judge Francis's recommendation to dismiss Plaintiff's claims for the reasons stated in the Report.

For the reasons set forth above, Defendants' application for dismissal under Rule 41(b) is GRANTED. The Clerk of the Court is respectfully directed to terminate the motion, Doc. 40, mail a copy of this Order to Plaintiff, and to close the case.

Furthermore, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith; therefore, *in forma pauperis* status is denied for purposes of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

It is SO ORDERED.

Dated: September 19, 2014  
New York, New York

  
\_\_\_\_\_  
Edgardo Ramos, U.S.D.J.